

WHEN THE OWL OF MINERVA TAKES FLIGHT AT DAWN: RADICAL CONSTRUCTIVISM IN SOCIAL THEORY

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I. INTRODUCTION

In this essay I first make some observations on the rhetoric of Unger's work. I then try to identify Unger's philosophical method (his warrant for moving from proposition to proposition) and his interpretation (the ontological status he assigns his theory) as more or less permanent philosophical possibilities and argue that this theoretical choice determines many of the most striking features of the theory. I then show how Unger's theory is designed in part to meet the problems that Rawls faces in his attempt to invent norms and institutions for the "basic structure" of society. Unger does this by creating what Kant, Hegel and Marx agreed could not be created, a normative *speculative* theory. I then focus on his basic metaphors and offer a critique, following Hannah Arendt, of the vision of politics embedded in them. Finally, I suggest that Unger joins to his basic metaphors a violent reinterpretation of Christianity that accomplishes a transvaluation of values that is modernist, univocal, and aestheticized.

II. THE RHETORIC OF THEORY

Unger understands well that his project is ridiculously ambitious. It requires a vast reconstruction of social, economic, legal, moral, political, and constitutional worlds, guided by a theory superior to every other theory, self-conscious about its own ontological and epistemological status, informed by a close analogy to scientific method as interpreted by the radical vanguard in the philosophy of science, advancing a "modernist project" embodied in the work of the great literary geniuses of the twentieth century, interpreted as containing a vast world-historical correction of the (!) "Christian-romantic" vision. The theory generates a concrete constitutional, political, and economic program—concerned not only about epistemological status, but also about how to indoctrinate and organize cadres of "revolutionary reformers" and where to look for constituents. Unger argues that the explanatory and prescriptive aspects of the theory are applicable to the

“rich North Atlantic countries,” the communist world, and the so-called Third World. Is the theory ridiculous in the sense that the sages and saints always seem ridiculous to their own age, or in the special sense that Promethean acts always are? Tihar to Stavrogin in *The Possessed*.

Unger knows it's ridiculous. In fact, he is most like Hegel in that he knows everything. There is hardly an objection he does not clearly state. He is a master rhetorician in this at least: that he so fairly states the objections against himself. Is this the fairness of a genuine intellectual *libertas ad opposita* or is it the characteristic of the deftest rhetoricians, who always state the opponent's case better than he could himself?¹ The theory has a drive, a thrust, that pushes past all objections. The willfulness is evident for example in its astounding generality.

Almost all of *Passion* and a good deal of the trilogy stems from a phenomenological description of certain personal and political experiences. This is a “storytelling with the austerity of discursive thought rather than the lush particularism of literary art, a storytelling about the exemplary individual caught in the mesh of personal dependencies and encounters, a storytelling that draws its chief inspiration from the experiences of context-breaking . . .”² This austerity, however, deprives the reader of the ability to make his or her own mind up about the basis of the universal in the concrete, whether his or her particular story is an “objective correlative” to his or her universal. My fear throughout was that Unger's truth is abstract and willful, that he is himself one of those “fancy rhetoricians” he describes, that he has no *principle* that would allow his own theorizing to be anything but his “ideological seduction.” Can I trust you, writer, when you enlist my aid as your “reader”: or is this Ben Franklin's borrowing a book from a political opponent to break down his vigilance? Clever and utterly manipulative. If politics is just fighting, and theory and practice are so closely intertwined. . . .

The thrust of the theory lies in the controlling metaphors and programmatic slogans. They are the engines of the enormous act of will and energy that lies in this work. It is, therefore, worth focusing precisely on the implications of these basic images and slogans.³ What are they? “Everything is politics,” and its entailments, “man as maker,” “society as artifact,” “conflict as tool.”⁴

Unger's rhetoric is likely to be alien to American academics, and especially legal academics, because he is critically addressing Marxist

¹ The characteristic refutations are that the objection involves a false prediction or embodies a sentimental archaism long since sacrificed on the butcher block of history.

² *PASSION* at 84.

³ See *infra* notes 27 through 55.

⁴ *SOCIAL THEORY* at 166.

scholasticism. Indeed, his efforts are prompted specifically by his disgust at the ease with which leftist intellectuals in his native Brazil were misled by that scholasticism about the real possibilities inherent in that country's recent turmoil. To the American legal academic Unger may seem to emerge like Melchizedek without intellectual parentage, so vast is his erudition and so little domesticated in the strains of Anglo-American political and legal philosophy to which we tend to turn when we seek a philosophical compass in legal matters. Our open ocean sailing is the most timid hugging the shore for him. One example: Though he and Rawls both begin from a short list of alternative moral positions, Rawls's list comprises only those moral theories recently championed in American or British philosophy departments. Sidgwick provides the list. Unger reaches for much more basic *Weltanschauungen* embodied in the world religions. Both philosophers are convinced that the battle among rival prescriptive theories is not likely to be won on the level of "meta-theory" and theory of knowledge (though both give great attention to the sorts of epistemological problems generated by the overlapping traditions to which each feels accountable). Both understand the need to "get on with" the task of generating concrete norms and specific institutions—something that has, in Rawls's view, been utilitarianism's great strength.

Unger has chosen to construct a theory to motivate those possessed of a "transformative vocation." Its abstractions seem, every one of them, a war plan.⁵ Indeed, another image that I could not escape in reading this long, often loosely structured and frequently repetitious trilogy, as it flowed around the many theoretical, practical, and historical obstacles in its path, was that of a kind of huge intellectual ancient Persian Army.⁶ Is the theory a gigantic rhetorical exercise, whose very comprehensiveness creates its own truth, so vast in its generalizations that by the time specialists here and there have shown its limitations, the sheer power of the wave has passed them by? More troubling, on Unger's own principles, why shouldn't it be? Utilitarianism succeeded largely because it appeared to generate specific institutional and moral consequences. Unger knows that too.

Unger argues that the line between a truly predictive theory and a self-fulfilling myth is murky, then spends over a thousand pages proposing one such myth. In his essay on psychiatry, he defines the success of a psychotherapy by the extent to which it "shared in the power of art to

⁵ Even what appears not to be—his rejection of an early Sartrean existentialism—really is. Since an existentialism so extreme could not seriously be constructive, it tends to be bohemian and privatistic. No wars there.

⁶ Kolakowski writes that, "Since Lenin was interested only in the political effect of his writings, they are full of repetitions. He was not afraid to repeat the same ideas again and again: he had no stylistic ambitions. . . ." L. KOLAKOWSKI, *MAIN CURRENTS OF MARXISM: II THE GOLDEN AGE* 523 (1978).

emancipate the imagination and the will.”⁷ Under current conditions in a “society in which public and private life are felt to be more or less starkly separated and in which the most probing experiences are, for most people, reserved to the intimate realm of private experience,” the explanatory story that psychiatry employs “with the best chance of success . . . is the one that combines a truth with a lie.” The truth is the metaphorical connection of the story with the life of passion. “The lie is the passage of this true insight through a prism that filters out whatever understandings of the history of passion and perception would be most likely to subvert willing participation in established society and culture.”⁸ He proposes to eliminate the “alloy of falsehood in explanatory stories” in psychiatry in order to “drive home the contingent and transformable character of the social and cultural settings of personal experience” and thus “to enlarge his realm of possible understanding and experience, to enlarge it even beyond what his society and culture could readily countenance” at the price of personal happiness, stability, and resignation.⁹

But has he moved the theory that combines truth with a lie to the level of social theory? “[W]e cannot separate, clearly and definitively, the part of a speculative social theory that represents a successful attempt at a more detached understanding and the part that can succeed only as a self-fulfilling myth, even a myth of emancipation and enlightenment.”¹⁰ Columbus “succeeded” from the perspective of world history (though not from his own) because he was in error about geographical fact. Lenin “succeeded,” Kolakowski argues, because he consistently failed to understand his situation and failed to predict even the near future, but always did so in the willful direction of the immanence of the revolution:

His mistakes enabled him to exploit the possibilities of revolution to the full [to the hilt!], and were thus the cause of his success. Lenin’s genius was not that of foresight, but of concentrating at a given moment all the social energies that could be used to seize power, and subordinating all his efforts and those of his party to this one aim. Without Lenin’s firmness of purpose, it is unthinkable that the Bolsheviks could have succeeded. . . . In critical situations Lenin committed violence on the party, and his cause prevailed as a result. World communism as we know it today is truly his work.¹¹

Unger tells us that his own theory is the “work of a mind anxious about the realism of the radical cause.”¹² His assertions are “conten-

⁷ *Passion* at 291.

⁸ *Id.* at 292–93.

⁹ *Id.* at 292–93.

¹⁰ FALSE NECESSITY at 324.

¹¹ KOLAKOWSKI, *supra* note 6, at 526.

¹² FALSE NECESSITY at 305.

tious but defensible grounds for argument rather than knockdown proofs.”¹³ By abandoning a futile quest for certainty he hopes to “gain the countervailing explanatory advantages suited to its character.”¹⁴ Yes, but what is the character of the “self-fulfilling myth” of this “anxious” mind?

Unger’s theory does not then *have* a rhetoric: it *is* a rhetoric. The modern political and social theories that most clearly distinguish formative contexts from routine or ordinary practice are unthinkable without a modern concept of science which sharply contrasts theoretical knowledge from commonsense knowledge. Formative contexts are what is known by a science of society, just as common sense knows ordinary “routine” practice. Ordinary morality governs the latter. What norm governs the formative contexts? Adam Smith, who sharply distinguished a scientific and commonsense knowledge of society and strongly influenced Marx, never faced the question. For him a deistic god had set in motion a deterministic history of formative contexts for man’s utilitarian good. Science could know this history, but the only normative bite of this knowledge was negative: In making legal judgments, for example, one should be careful to rely solely on one’s moral sentiments and not try directly the Promethean task of pursuing that utilitarian goal. As with happiness in traditional moral learning, the end cannot be reached by aiming at it. (There is of course a scholasticism concerning the impossible relationship between the explanatory and the prescriptive in Marx.) In any case, *the nature of the formative context or basic structure each theory knows is determined by the self-understanding the theory has of its own ideal of theoretical or “scientific” knowledge.* For a rhetorical theory, operationalist, and existentialist, a formative context *must* be the result of past arbitrary determinations. Taken “to the hilt,” all determinations *must* be the results of the most morally arbitrary of actions, “fighting.”

Unger chooses, and on his own principles it must be pure choice, one of the perennial philosophical options as to method and interpretation of his own theorizing. It’s represented in ancient philosophy by the Sophists and by Cicero. Unger rejects all modes of thought in which simple parts are put together (logistic methods), universal truths are approximated (dialectical methods), or problems solved (problematic methods). Instead he adheres to a self-understanding of method in which arbitrary formulations are interpreted (operational methods).¹⁵

¹³ FALSE NECESSITY 340.

¹⁴ *Id.*

¹⁵ I follow Richard McKeon’s account of “philosophical semantics” here. Philosophical Semantics and Philosophical Inquiry (unpublished paper on file at the University of Chicago). See also R. MCKEON, FREEDOM AND HISTORY: THE SEMANTICS OF PHILOSOPHICAL CONTROVERSIES AND IDEOLOGICAL CONFLICTS (1952); M. BUCKLEY, MOTION AND MOTION’S GOD (1971). It may be that these possibilities are exhaustive: “The assumption of least parts, but no whole except by composi-

For operational or rhetorical methods, such as the one Unger embraces, freedom is “achieved and retained operationally by the acquisition and use of power and of knowledge which is power.”¹⁶ For the existentialist interpretations, “freedom is spontaneous or undetermined activity, and external impediments include psychological as well as physical hindrances and the fixities of automatic and habitual responses . . .”¹⁷

Unger says that no one has ever taken the notion of society as an artifact to the hilt, not even Vico, who is most closely associated with the notion that we can know society only because we make it. Vico was a professor of rhetoric who sought to revive rhetorical modes of thought in the face of Cartesian ideals of science. Unger is himself very much in this tradition: He stands with the rhetoricians against the grammarians (structuralists, for example) and logicians (micro-economists). He is right that his position is extreme: It does take one mode of thought to the hilt, that represented by the sophistical or rhetorical tradition.

For a pure rhetorician, facts are purposes and purposes are arbitrary. His assertion then that problem solving and interest accommodation are decisively shaped by unique institutional and imaginative contexts that cannot be explained as the mere residues of past exercises in problem solving and interest accommodation is a pure expression of an operationalism against a problematic method. But, as Hegel said, one bald assertion is as good as another. My suspicion is that a problematic method can just as consistently interpret history and the current contexts of problem solving as the results of the residues of past exercises in problem solving. John Dewey does, in the main, do just that. And it is difficult to see how Unger can, *from within his theory*, simply reply, “History just doesn’t happen that way.”

I will argue that many of the problems his theory suffers from are more or less directly related to the extremism of his operational ideal of the truth of this theory.

III. UNGER’S CRITIQUE OF RAWLS AND THE NEED FOR AN EXPLANATORY THEORY

Unger criticizes what he takes to be one of the most influential lines of normative social and political theory abroad in the Anglo-Saxon world, that associated with Rawls in social theory and Dworkin in legal theory. My purpose here is simple and thus my sketch of Rawlsian method is oversimplified. Unger criticizes Rawls’s approach,

tion; the assumption of an ontological unifying principle but no absolute least parts; the rejection of least parts and separated wholes and the assumption of problems and natures encountered in the middle region; and the assumption that all distinctions are initially arbitrary.” *PHILOSOPHICAL SEMANTICS* at 4.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 7.

representative of the “liberal center” as he puts it, in quite specific terms. I believe that his criticisms are telling, though a full description of my convictions here would take me too far afield. Unger’s *constructive* attempt can well be understood to provide exactly the kind of explanatory-prescriptive theory that Rawls’ “failure” mandates, *if* one is to move beyond Rawls on the left with a robust normative general theory applicable to, indeed determinative of, the basic structure of society, or for formative contexts. My strong misgivings about Unger’s project expresses my own “Kantian” willingness to pay the price of theoretical sterility to avoid the imposition of enormously abstract romantic and aesthetic norms in politics.

The key subject of justice for Rawls is the basic structure of society, a notion akin to Unger’s concept of formative context. The basic structure provides the background institutions within which we may pursue our individual interests and live our personal moral lives. The morality of human action is not measured by the goals we pursue but by the conditions and constraints we impose on their pursuit. This rests on an acceptance of the thoroughly Kantian notion that the (noumenal, practically reasonable) self is prior to the ends it pursues. Of course, Rawls tries to shed from his theory as much of the Kantian metaphysical “baggage” as he can manage, a maneuver that causes many of the strains in the theory, as Sandel has pointed out.

The problem is to evolve norms to govern this basic structure. Ordinary morality, which always operates within a basic structure, is of no use here. On this Rawls agrees with Adam Smith, Kant, Hegel, and Marx. The key constructive device for Rawls is the notion of reflective equilibrium. It is through reflective equilibrium that the shape of the original position is determined. Since the original position is created “so as to lead” to a particular set of principles and institutions, the fact that the occupants of the original position, proceeding strictly according to the principles of rational choice, choose this or that institutional structure is philosophically trivial. Whether or not the “representative men” would choose Rawls’ principles presents only secondary logical questions (within the aspiration to “moral geometry”), or questions in game theory as to whether the “rational” degree of risk aversion can be specified within a game-theoretical framework.

Rawls describes his construction of the original position and notion of reflective equilibrium in the following terms:

In searching for the most favored description of this situation [the original position] we work from both ends. We begin by describing it so that it represents generally shared and preferably weak conditions. We then see if these conditions are strong enough to yield a significant set of principles. If not, we look for further premises equally reasonable. But if so, and these principles match our considered convictions of justice, then so far well and good. But presumably there will be discrepancies. In

this case we have a choice. We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium.¹⁸

The generally shared conditions express our respect for one another as moral persons and spring from the most formal or “Kantian” moment in the theory. Since “we” do not normally have elaborate convictions about principles of justice, reflective equilibrium is plausible only if one can derive from the principles a set of institutions which actually do embody those convictions. Rawls proceeds to do just that in the “four stage sequence.” A “back-and-forth” then becomes possible between the formal structure of the original position and those aspects of the institutional framework—constitutional, legislative, and socioeconomic—that embody our settled convictions of justice.

This is where Rawls faces his problems.¹⁹ Some of the economic institutions he “derives” are too indeterminate to compare to settled existing institutions. Some purchase similarity to existing institutions at the price of deviation from the fairest reading of the demands of his actual principles. On the other hand, if his principles are taken seriously, especially the lexically prior opportunity principle, one derives institutions that are strikingly different from existing American institutions, often in odd ways that seem more the artifacts of the simplifying devices of his theory. If this is so, then his attempt to escape Kantian formalism in constructing principles “so as to lead” to particular principles and institutional consequences involves either an act of will or an act of judgment. As an act of will it is ideology. Judgment, in any coherent meaning of that term,²⁰ simply functions without object at this level of generality. The difficulty with simply “finding” our settled judgments of justice in our institutions and then extending them is that these institutions embody multiple lower level conceptions of justice that are incompatible with each other and in tension: to each according to his marginal contribution, to each according to his legal rights, to each according to his need.²¹ Each of these principles if ruthlessly universalized can generate a “utopia” and can be found in relatively pure form in one or other thinker and society. But there is no obvious way in which any one of

¹⁸ J. RAWLS, *A THEORY OF JUSTICE* 20–21 (1971).

¹⁹ I argue this at length in Burns, *Rawls and the Principles of Welfare Law*, 83 *NORTHWESTERN UNIVERSITY LAW REVIEW* (1989) at 184.

²⁰ R. BEINER, *POLITICAL JUDGMENT* (1983).

²¹ The most acute statement of this principle is D. MILLER, *SOCIAL JUSTICE* (1976).

them “more fully” embodies the master principle of respect for human beings as moral persons or ends in themselves.

Rawls wants to give his theory genuine normative power, and so cannot allow his most general principles to sink back into the swamp of existing institutions and the lower level conceptions of justice with which they are intertwined. If the real is the rational, period, there is no place for general normative theory applicable to the basic structure.

Now even conservative thinkers can allow for the extension of a particular ideal or concept already implicit in the legal or political system to new areas in order to resolve a particular “crisis” or “problematic situation” that has developed as a result of the internal dynamics of a legal-economic institution in all its concreteness. Rawls’s goal is much more ambitious and the reach of concepts which we may properly call “moral” is much vaster. In order to give concreteness to the moral imperative within his theory, he projects out first principles and then the institutions toward which legislators and judges are *obliged* to move their societies. To a Burke, Hegel, Arendt, or Oakeshott it will seem that this places impossible burdens upon strictly moral concepts and moral arguments. One must be content with a much less normatively ambitious (though not necessarily theoretically ambitious) theory.

To travel down the more normatively ambitious road, it would apparently be necessary to field an explanatory-prescriptive theory which would allow the theorist to distinguish between those aspects of existing institutions that had normative weight and those that are without such weight. This would require a theory of contemporary social and economic realities in order to discern “what is practically necessary and at the same time objectively possible.”²² It would show that aspects of those realities arose contingently (Dewey) or more or less necessarily (Marx) under social conditions that no longer obtain, and would contain something like Dewey’s account of the imprisonment of practices in obsolete but inertial social institutions or Marx’s theory of false consciousness.²³ Without such a theory, a normative structure, such as the one that Rawls elaborates, in which the theorist “chooses” to create this or that variant of the original position “so as to lead” to

²² J. HABERMAS, *THEORY AND PRACTICE* (1973) at 44.

²³ J. DEWEY, *LOGIC: THE THEORY OF INQUIRY* 487–513 (1938). L. KOLAKOWSKI, *MAIN CURRENTS OF MARXISM: THE FOUNDERS*, 174–76 (1978). Social conflict between or among groups is obviously a much less central category in Dewey’s thought than in Marx’s, though there are many significant convergences; R. BERNSTEIN, *PRAXIS AND ACTION: CONTEMPORARY PHILOSOPHIES OF HUMAN ACTIVITY* 11–83, 165–229 (1971). Unger finds the “false consciousness” explanation of the stability of prevailing economic institutions in the era of universal suffrage to be limited. “False consciousness” does describe the “second-order necessity” of the routines which a formative context shapes between periods of conflict. The people’s assumptions about the necessity of those routines “is never stronger than the framework of institutions, practices, and preconceptions on whose continued stability it depends.” Small scale conflict can, he argues, quickly escalate and undermine the “pieties that until then had seemed to bewitch” people. *FALSE NECESSITY* at 215.

this or that set of basic institutions would remain only a choice, an exercise of freedom beyond explanation.

Enter Unger. One of his points of departure for social theory is the failure of the Rawlsian project to generate credible ideals for and transformative insight into the basic structure or formative contexts of society.²⁴ He accuses the theory of a “fatal vacillation” between principle and intuition. But rather than introducing a theoretical device for distinguishing those aspects of the existing order that have normative force and those that do not, he eliminates the problem by constructing a theory in which existing “institutions, practices, and preconceptions” are both infinitely plastic, a kind of *materia prima* for the will of those with a transformative vocation, and totally bereft of normative significance, embodying nothing like a “considered judgment” or a *Sittlichkeit*. To do this he combines the master metaphor of society as artifact which is consistent with his “rhetorical” theory with his reinterpretation of the Christian vision. It is to his master metaphor that I now turn.

IV. *Homo Faber* and Political Life

Unger’s transformative man is radically worldless. His goal is to follow this theory to create a social world in which everybody is as worldless as possible—a world in which “negative capability” is given the fullest possible play. In that sense it’s a maximizing theory. Unger’s utopia is not a world in which some degree of alienation is encouraged in the interests of criticism and to embody the modern principle of subjectivity, the legacy of Christianity’s vision of the unique value of the person that forever bars the return to the fully integrated societies of antiquity. Although Unger’s volume on personal relations is not yet published, the theory clearly rejects the “critical” strategy of bowing to human finitude by partitioning the intellectual and practical worlds, and assigning to each its own principle. In the more “progressive” version of this kind of critical or, broadly, Kantian theory, principles from one sphere may be allowed to penetrate another. This penetration is, however, a difficult, “unprincipled” matter, dependent upon an intermixture of prophecy and wisdom, moral or religious proclamation, and political judgment.

The latter process is wholly different from the politics of fabrication that Unger endorses. For Rawls, existing society is not an artifact. It is rather the sediment of earlier considered moral judgments embodying conceptions of justice. It has moral force, a force that reflective equilibrium honors. It is not the result of so morally arbitrary an activity as

²⁴ SOCIAL THEORY 37–39. See also THE CRITICAL LEGAL STUDIES MOVEMENT 13 where his criticism is extended to the Rawls-inspired rights and principles school of legal philosophy.

“fighting.” There is no perfect fit between our current moral judgments and the principles of justice embedded in those institutions, a fact that provides the opening for normative theory, but there is considerable overlap. Now, a human artifact is *for* something. For Kant politics is for morals: Politics is for law and law guarantees the purely negative conditions that make respect for the dignity of persons as ends in themselves more nearly possible.²⁵ The moral life is “the Good,” because the good will is the only thing of absolute value, that which transcends the meaningless Newtonian natural mechanism and the depressing and morally destructive tale of foolish ambition, greed, and chance that was human history. Only the unique spontaneity (*Wille*), which a person exercises when he acts morally (with practical reasonableness), frees him from meaningless natural mechanism (and its psychological manifestation, arbitrary will, *Willkâr*). The discontinuities between the modes of political, legal, and moral action and the problems of their interrelations that plague Kantian thought are themselves the marks of our *finitude*, the senses in which the human condition must be “broken” in order to provide its various spaces: domestic, moral, political, legal, religious, always a scandal to speculative thought’s drive to unify.²⁶

The fundamental basis of Kant’s belief that there must be a noumenal world in which moral willing participated was just this: Without such a world, “it becomes impossible to distinguish between an aesthetic and a moral praxis.”²⁷ The former would “consist in determining a future state of affairs—an ideal—as the good, and therefore as the end to which our action ought to be the means.”²⁸ All we would need was a science, an explanatory theory, that would allow us to get there from here. Kant’s objection, against the romantics, is that the “determination of the good as an object in time is necessarily aesthetic,” resting on an inner conviction beyond proof:

Conceptual thought could at most tell us that such a state of affairs is possible, and how we can realize it—but not that it is the good. If we are none the less convinced that it is, this can only mean that we have represented to our minds an imaginative synthesis which we feel to be fully satisfactory. The hall-mark of the aesthetic standpoint is that it defines both the true and the good as ‘that which satisfies the mind.’ This is the proper definition of the beautiful, and the satisfaction is a disinterested satisfaction. But if we confuse this with the morally good, then our Utopia takes on the character of a moral determination. It becomes universally obligatory as the objective of action.²⁹

²⁵ P. RILEY, KANT’S POLITICAL PHILOSOPHY 12 (1983).

²⁶ R. KRONER, KANT’S WELTANSCHAUUNG (1956).

²⁷ J. MACMURRAY, THE SELF AS AGENT 55 (1957).

²⁸ *Id.*

²⁹ *Id.*

A person with such a vision, and with requisite power, is not only permitted but morally obligated to coerce others into conformity. It is the fear of romantic totalitarianism that convinces Kant that the “Kingdom of God is within.”

For Arendt, too, fabrication, the creation of human artifacts, including legal artifacts, first the constitution and then the laws, is for something. It is for politics, the mode of human action that, in her vision, overcomes meaninglessness. Constitutional and legal fabrication creates the conventional public identities or masks that are discontinuous with the truly unique and differentiated self, a self that can only be fully revealed to “friendship and sympathy, and to the great and incalculable grace of love,”³⁰ not to the formal, constructed equality of the *nomoi*. But Arendt remains a critical thinker in the Kantian sense in that each mode of activity is “redeemed” by another, and thus must be kept distinct from the others:

We have seen that the *animal laborans* could be redeemed from its predicaments of imprisonment in the ever-recurring cycle of the life process, of being forever subject to the necessity of labor and consumption, only through the mobilization of another human capacity, the capacity for making, fabricating, and producing of *homo faber*, who as a toolmaker not only eases the pain and trouble of laboring, but also erects a world of durability. The redemption of life, which is sustained by labor, is worldliness, which is sustained by fabrication. We saw furthermore that *homo faber* could be redeemed from his predicament of meaninglessness, the “devaluations of all values,” and the impossibility of finding valid standards in a world determined by the category of means and ends, only through the interrelated faculties of action and speech, which produce meaningful stories as naturally as fabrication produces use objects. If it were not outside the scope of these considerations, one could add the predicament of thought to these instances; for thought, too, is unable to “think itself” out of the predicaments which the very activity of thinking engenders. What in each of these instances saves man—man *qua animal laborans*, *qua homo faber*, *qua* thinker, is something altogether different; it comes from the outside—not to be sure, outside of man but outside of each of the respective activities. From the viewpoint of the *animal laborans*, it is like a miracle that it is also a being which knows of and inhabits a world; from the viewpoint of *homo faber*, it is like a miracle, like the revelation of divinity, that meaning should have a place in this world.³¹

With action it is different. Action’s first existential limitation stems from the irreversibility of the processes it puts into motion. Its redemption is itself an action, that of forgiveness.³² Its other limitation stems from its unpredictability, “for the chaotic uncertainty of the future,”

³⁰ H. ARENDT, *THE ORIGINS OF TOTALITARIANISM* 301 (1973).

³¹ H. ARENDT, *THE HUMAN CONDITION* 236 (1958).

³² *Id.* at 237.

which the capacity for action itself ensures. Its redemption is through an action, the faculty to make and keep promises.

Recall Unger's basic metaphors: "man as maker," "society as artifact," "conflict as tool."³³ For Arendt, this set of metaphors gives over the political realm into the hands of *homo faber*, but in a way that robs that mode of human activity of its special contribution to the human condition. Unger's normative principle for evaluating constitutional and economic arrangements is the maximizing of negative capability, the ability to remake the formative contexts in the process of everyday life. For Arendt, *homo faber* contributes to the world its durability and stability. Durability in artifacts and institutions stand against the Heraclitean flow of physical nature and psychic nature, the "voracious needs and wants of their living makers and users."³⁴ Human identity is constituted by tangible worldly objects: "being related to the same chair and the same table"³⁵ and living within a stable "constructed" constitutional and legal framework that is no more expressive of the "will" of the people than is a house expressive of the will of those who live in it.

Man, insofar as he is *homo faber*, instrumentalizes: The end does more than justify the means; it "produces and organizes them."³⁶ It is the end that justifies the necessary violence done to nature to get the wood, and making the cabinet justifies reshaping the wood often beyond recognition. The experience of fabricating has a certain Promethian pleasure about it: The "experience of this violence is the most elemental experience of human strength . . . [and] can provide self-assurance and satisfaction, and can even become a source of self-confidence throughout life."³⁷ What Unger seeks to do is to freeze *homo faber* in his Promethean moment of destruction ("context smashing"). What he creates is measured solely by the degree to which it lends itself to continuous smashing. Both of Unger's varieties of empowerment "require not only that social relations be jumbled up but that they be kept in a state of heightened plasticity."³⁸ Heightened plasticity "is itself a mode of empowerment . . . for it gives us mastery over the social settings of action."³⁹

There exists a problem for modern utopias that is especially poignant for Unger whose modernism is taken "to the hilt." It is true that even for Plato, the philosopher-king "makes" his artifact, his city, as the sculptor makes his statue. Before the modern age, however, both

³³ SOCIAL THEORY at 166.

³⁴ H. ARENDT, *supra* note 31, at 137.

³⁵ *Id.*

³⁶ *Id.* at 153.

³⁷ *Id.* at 140.

³⁸ PASSION at 188.

³⁹ *Id.*

fabrication and political action were viewed as limited by reason, a faculty whose knowledge, which was a vision of or participation in the Good, imposed limits. "Only the modern age's conviction that man can know only what he makes, that his allegedly higher capacities depend upon making and that he therefore is primarily *homo faber* and not an *animal rationale*, brought forth the much older implications of violence inherent in all interpretations of the realm of human affairs as a sphere of making."⁴⁰ Marx's acceptance of the necessity of violence as the means of significant social change "only sums up the conviction of the modern age and draws the consequences of its innermost belief that history is 'made' by men as nature is 'made' by God."⁴¹ After all, what *is* a hilt?

Unger fabricates a theory in which the standard for success of the constitutional framework is nothing but the maximum possibility of endless refabrication of "formative contexts" and, necessarily, of the constitution itself. As he recognizes, this is modernism taken to an extreme. Kant, as a modern thinker, attempted to solve this problem of infinite regress or "bad infinite" within the framework of *homo faber*, the framework of ends and means, by transcending it through his doctrine of man, and the good will, as an end in itself, something that would confer *meaning* on an otherwise meaningless endless sequence of ends and means. The good will is bedrock, the noumenal world, a foundation, though its absoluteness poses enormously difficult problems addressed with the greatest delicacy in the critical philosophy.

Unger will, of course, have none of that. Unger attempts to find meaning in the endless remaking of the human "artifact." Herein lies the problem: "While only fabrication with its instrumentality is capable of building a world, this same world becomes as worthless as the employed material, a mere means for further ends, if the standards which governed its coming into being are permitted to rule it after its establishment."⁴² One of the consequences of conceiving political action as making, as fabrication, the means to producing an object, is that its distinctive form of speech, political rhetoric, becomes an instrument of war ("fighting"), "mere talk," simply one more means toward the end, "whether it serves to deceive the enemy or to dazzle everyone with propaganda."⁴³ Unger's own description of a politicized environment riddled with meetings where one finds only "manipulation and boredom" comes to mind. His own assurance that the typical forum for politics in an empowered democracy will be "conversation" seems both

⁴⁰ *Id.* at 228.

⁴¹ *Id.*

⁴² *Id.* at 156.

⁴³ *Id.* at 180.

unlikely and not very reassuring. After all, there is an entire industry devoted to teaching the “art” of manipulative conversation.

Unger’s actual constitutional arrangements provide for a set of rights that provide traditional civil rights and physical security, minimal material welfare, protection against subjugation by any public and private power.⁴⁴ He combines this with a structure in which ideological political parties can enact their programs with relative ease, even programs, as he recognizes, that would involve the dismantling of his constitutional structure. Practically, however, ideological parties on the right have always taken aim at many of the social and economic immunity rights that Unger wants to provide. They view the elimination or scaling back of those rights as an important element of their programs: The recent actions of a relatively nonideological party in the United States should be proof enough of that. How are the petty-bourgeois commodity producers, who would probably dominate Unger’s government, likely to view these immunity rights? Recall that the texture of their routine practices are subject to “the most unforgiving versions of nineteenth-century private law” and that they will live in a society where the norms of mutuality that protect the weak from the strong “can be pretty well dispensed with.”⁴⁵

Moreover, on the level of theory, Unger seems to be subject to exactly the same kind of criticism that he levels at Rawls and the Rights and Principles school, only in a more disguised way. To say that Unger’s constitution would provide “physical security, minimal material welfare, protection against subjugation by any public or private power” says almost nothing about the many normative policy decisions (about the relation between adequacy and work incentive, equality and equality of opportunity, for example) that are the hard questions in social welfare policy. Rawls does seem to be guilty of a “fatal vacillation between principle and intuition” in these matters. For Unger intuition is stripped of normative significance completely, and principle is too abstract to answer the important questions. He forsakes such questions and trusts in the endless process of refabrication. What is to stop his ideological parties, imbued with an instrumental spirit of the laws, from vastly scaling back or eliminating those rights? For he has neither authority, tradition, nor the conviction, without metaphysical realism, that those rights are . . . well, real.

George Grant—a student of Nietzsche and Heidegger—argues that the most decent constitutionalism is wholly discontinuous with the modernist philosophy of the twentieth century to which Unger appeals. “Contemporary” philosophy can’t provide the justification we need for the most basic human rights. In his view, contemporary thought is

⁴⁴ FALSE NECESSITY at 513–20.

⁴⁵ *Id.* at 517, 522.

beset with “darknesses” that prevent modernist reason from giving any account or legitimation of the premises of our constitutionalism, especially of individual rights. Under these circumstances, it would be disastrous, Grant argues, to let any specifically “modernist” philosophy, especially one would think, a philosophy that took modernist thought about society “to the hilt,” to inform constitutional thought. It’s no accident, Grant repeats, that Heidegger, “the greatest contemporary philosopher,” was drawn to national socialism, whose “inner truth and greatness” he perceived as “the encounter between global technology and modern man,” words that Heidegger published eight years after the Reich’s end. Grant recalls that “[o]ne theoretical part of that encounter was the development of a new jurisprudence, which explicitly distinguished itself from our jurisprudence of rights, because the latter belonged to an era of plutocratic democracy which needed to be transcended in that encounter. Such arguments must make one extremely careful of the ontological questioning of our jurisprudence. . . .”⁴⁶ I assume that it would make one even more careful about the restructuring of our jurisprudence on modernist lines, and perhaps especially about a constitution where the “whole life of society is in fact arranged so as to multiply the transformative practical and imaginative activities that bring every aspect of society’s order into question and open that order up to conflict.”⁴⁷

Arendt is in substantial agreement.⁴⁸ “Tradition transforms truth into wisdom, and wisdom is the consistence of transmissible truth.”⁴⁹ For her, the medieval and early modern tradition of natural rights has not survived the political catastrophes and intellectual developments of the twentieth century. The treasured inheritance of American constitutional rights thrives as an historical inheritance from the common law rights of Englishmen and by an achievement absolutely unique in the history of all modern revolutions, including the French and Russian Revolutions. This was the establishment of authority and tradition in the Supreme Court. For her, this is the *only* specifically modern in-

⁴⁶ G. GRANT, ENGLISH-SPEAKING JUSTICE 103–4 (1985). Grant’s conclusions are consistent with the relative ease with which John Courtney Murray could ground American constitutionalism on premodern modes of thought in J. MURRAY, WE HOLD THESE TRUTHS; CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION (1960), though those were not the modes of thought in which the Founders themselves defended their project. See Burns, *The Federalist Rhetoric of Rights and the Instrumental Conception of Law*, 79 NORTHWESTERN LAW REVIEW 949–66 (1985). It is also consistent with Arendt’s assessment that the American Founders solved in practice but not in theory the problem of the legitimacy of fundamental law in a secular state, a practical solution that saved the American republic precisely from “the onslaught of modernity.” H. ARENDT, ON REVOLUTION 196 (1965).

⁴⁷ FALSE NECESSITY at 134.

⁴⁸ Burns, *Hannah Arendt’s Constitutional Thought* in AMOR MUNDI: EXPLORATIONS IN THE FAITH AND THOUGHT OF HANNAH ARENDT 157–85 (J. Bernauer ed. 1987).

⁴⁹ Arendt, *Walter Benjamin* in H. ARENDT, MEN IN DARK TIMES 196 (1968).

stance of such authority and tradition, which consists in our civil religion, our being tied back (*religare*) to the foundation, a tie which Unger would seek to cut. "Memory and depth are the same, or rather, depth cannot be reached by man except through remembrance."⁵⁰ The following description of the risk Unger is prepared to take makes hugging the shore of tradition rather more appealing:

The movement in this direction is subject, by its very nature, to a catastrophic detour from which there is no guaranteed automatic return. The system of powers and immunities may be followed by the overthrow of all the citizen's defense against the state, a state whose structure of right need be no more than its own dream of absolute power. . . . This terror can occur only as an interlude, though a repeated and savage one . . .⁵¹

Does Unger fail to appreciate, as Robespierre came to understand, how difficult, indeed impossible on modernist premises, it is to "put the law above man"? Without either a "higher source" or genuine authority, law could follow law with dizzying speed and fatal consequences, each one swept away by the higher law of the Revolution itself.⁵² "In theory as in practice, only a counter-movement, a *contre-revolution*, could stop a revolutionary process which had become a law unto itself."⁵³

In sum, Unger proposes to remedy Rawls' "fatal vacillation" between principle and intuition. Rawls' principles and intuitions are "result oriented": they embody convictions about the just distributions of the benefits of social cooperation. Unger eliminates the possibility of the conflict by invoking a set of slogans and metaphors that elevate the *process* of political action above any particular result. All its laws are "laws of movement."⁵⁴ His metaphorical understanding of politics is distinctive: Politics is the use of the tool of conflict to refabricate an artifact endlessly. He appeals to the Promethean joy of *homo faber* as an end in itself; it is to serve this end and not to establish any particular result that the entire utopia is constructed. It provides neither a substantive moral ideal of justice that includes a basis for human rights, as Rawls attempts, nor a critical philosophy that places meaningful action outside the endlessly accelerating process of refabrication, as Arendt provides.

I will argue in the next section that Unger's aggrandizement of the sphere of the political, understood in his particular sense, is at the expense of the moral sphere of human interaction. I suggest that his invocation of Christianity to move beyond good and evil in a prescrip-

⁵⁰ Arendt, *What is Authority?* in H. ARENDT, *BETWEEN PAST AND FUTURE* 140 (1977).

⁵¹ *Id.*

⁵² H. ARENDT, *ON REVOLUTION* 183 (1963).

⁵³ *Id.*

⁵⁴ H. ARENDT, *supra* note 30, at 463.

tive theory involves a violent transvaluation of values both for Christianity and for politics.

V. REFLECTIONS ON MODERNISM AND THE MORAL LIFE

Unger, as a normative revolutionary thinker, rejects the doctrine that a substantive social philosophy merely mirrors the society of which it is a part. He cannot echo the words of Hegel's mature philosophy: "So much for philosophy telling the world how it should be. . . ." On Hegelian principles the creation of *Politics* would be possible in, and an expression of, a mode of modernism that was ready to die. Of course, that is what a "traditionalist" author such as MacIntyre suggests. Indeed that focus of MacIntyre's work is the restoration of the possibility of moral life⁵⁵—the life that man was made for and which answers the question, "What kind of man shall I become?" MacIntyre's project demonstrates the sense in which Unger's is a choice and, on his own principles, an arbitrary choice.⁵⁶

What is necessary for that kind of life is the existence of authoritative practices, which must be projected from modernist influences. MacIntyre projects communities discontinuous with modernity to recreate the possibility for moral life. Unger, on the other hand, radicalizes what MacIntyre takes to be the worst aspects of modernity. Unger seems to think that traditional notions of morality—that is, Austin tells us,⁵⁷ morality itself—are too tightly intertwined with an acceptance of existing institutions. But genuine practices require the existence of genuine authority. Authority is grounded in an acknowledged superior assimilation of the powers that make for an effective practice. It is an example of *justified* hierarchy and roles. (Unger's "unjustified" hierarchy and "rigid" roles hedges: He doesn't tell us straight out what makes a hierarchy justified and what makes a role not rigid.)

I practice a very modest craft, the practice of trial law. In some ways I am critical of these institutions and practices. Participants often try, largely for moral reasons, to change those "formative contexts" if that is not too broad a term for a relatively limited set of institutions and practices.⁵⁸ But that is only part of the experience of participation

⁵⁵ A. MACINTYRE, *AFTER VIRTUE* (1981).

⁵⁶ Ironically, he hurls at a morality of the virtues the same charge that Marx hurled at the petty-bourgeois economy Unger himself espouses: Sentimentality, failing to cast a cold, clear gaze on existing conditions and failing to appreciate that you can't go home again. Unger concedes Marx's argument, but then sets about to change the formative contexts that Marx's deep logic theory took to be determined and impervious to a wave of the theorist's wand. MacIntyre, who has a criticism of deterministic social science that in many ways parallels Unger's, would seek to change the formative contexts of modernity so as to make more traditionally *moral* life possible.

⁵⁷ Austin, *A Plea for Excuses*, 57 *PROC. OF THE ARISTOTELIAN SOC'Y* 8 (1956).

⁵⁸ M. FRANKEL, *PARTISAN JUSTICE* (1978).

in this practice, which is a contemporary practice of rhetoric, one of the traditionally most morally complex of the practices. Often I feel judged by the practice, inadequate to it and to my role within it. These are not simply technical inadequacies, but moral inadequacies: inability to overcome fear or self-consciousness or, more subtly, inability to “see” the moral truth of a human situation so as to construct an examination or argument around it⁵⁹ or tell a minimally acceptable story to allow the truth of a situation to appear. As Arendt has reminded us, only the pure of heart can tell a story that says the thing.⁶⁰ Just as the person transcends the role, the role transcends the person. This is a truth that Unger’s methods and principles seem not to allow.

Ordinary moral norms were developed to meet human needs. These moralities constrain the individual’s propensity, whose classic statement is Kierkegaard’s aesthetic pattern, to view the entire world as a function of his or her material and erotic possibilities. The amazing thing, noted by the great spiritualities and moralities, including Christian moralities, is that a person’s acceptance of moral norms effect a kind of pedagogy in seeing the other as other than can in turn effect a basic transformation of the soul—call it a conversion, as Bernard Lonergan still does.⁶¹ What seemed like an alien doom *ab extra* turns out to be a step on the *intinerarium mentis ad deum*.⁶²

Unger would call this morality “routine.” The highly rhetorical choice of words deprecates the insight, effort, and heroism that ordinary people exhibit in living according to these norms. Kant found the ordinary man living morally to be as sublime as the starry heavens above and indeed found his “good will” to be the eternity in a grain of sand—the peculiarly human form of the reconciliation of the infinite and the finite in man—that made meaningful the otherwise meaningless and mechanical course of world history. Unger follows not Kant

⁵⁹ See J.N. FINDLAY, *KANT AND THE TRANSCENDENTAL OBJECT: A HERMENEUTICAL STUDY* ix (1981):

“My own thought-relations to Kant have continued throughout my philosophical life. While I began interpreting Kant in terms of an idealism which saw all knowledge as springing from the spontaneous thought-acts of the pure subject into which there could be no external intrusion—the Thing-in-itself being a merely senseless survival—I was led to see and feel the many absurdities of trying to account the content of knowledge, and for agreement among knowers, on such a purely constructive basis, and was also deeply influenced by Prichard’s book, *Kant’s Theory of Knowledge* (1911), in my perception of profound error in any opinions which assimilated knowledge to making. I see moral as well as intellectual error in such opinions, since they tend to destroy the deep respect for existent fact and being without which men cannot be decent or courageous.”

⁶⁰ H. ARENDT, *EICHMANN IN JERUSALEM* 229 (1963).

⁶¹ B. LONERGAN, *METHOD IN THEOLOGY*, 238–39 (1981); See I. MURDOCH, *THE SOVEREIGNTY OF THE GOOD* (1971).

⁶² “Fighting” can be a step on this way: as an experience of freedom, discipline, and “selflessness” as many aristocratic moralities, from Platonic to chivalric to Prussian to Edwardian, promise. But it’s only a step.

but Marx. When asked by his daughter his definition of happiness, he responded directly: "Fighting!" It seems to me that *Passion* effects a transvaluation of values for a thinker who now realizes that traditional Christian morality is in many ways profoundly antipolitical.⁶³

We know that politics are necessary and we struggle to understand the relationship between the "political virtues" and "moral virtues." Unger eliminates this tension by eliminating one side of it. He writes and theorizes relentlessly from the perspective of the political actor, the fighter, the prophet. He ignores Weber's stern advice about the necessary corruption of ends by means for the persons who are politicians in the modern world. And, I fear, he ignores the conclusion drawn by perhaps the most zealous advocate of political life:

This whole [political] sphere, its greatness notwithstanding, is limited. . . . [I]t does not encompass the whole or man's and the world's existence. It is limited by those things which men cannot change at will. And it is only by respecting its own borders that this realm, where we are free to act and to change, can remain intact.⁶⁴

Everything in the public world may be frozen politics in the sense that nothing could appear in the world of power save through political means: no rights of Englishmen without the threat of fighting at Runnymede. Unger characterizes this process in the following terms:

An institutional or imaginative framework of social life arises through the containment and interruption of conflict. Defeated or exhausted, people stop fighting. They accept arrangements and preconceptions that define the terms of their practical and passionate relations to one another.

These terms are then continuously recast as an intelligible and defensible scheme of human association: a set of models of sociability to be realized in different areas of social life. This reconstruction is more than an imperative of justification. It is an aspect of what it means to settle down in a social world and to make out of it a home. People then no longer need to understand the organization of society as merely the truce lines and trophies of an ongoing social warfare.⁶⁵

This is what Unger calls the "spiritualization of violence." There is, however, a point to what an older rhetoric called the "genetic fallacy." Political means may be used to create "spaces" where religious and moral practices discontinuous with those means may flourish. The linguistic turn prefers to speak of different "discourses" and a linguistic

⁶³ See e.g., K. POLANYI, *THE GREAT TRANSFORMATION* 249–58 (1957); H. ARENDT, *supra* note 52, at 33, 36.

⁶⁴ Arendt, *Truth in Politics* in 263–64 in *supra* note 50.

⁶⁵ SOCIAL THEORY at 151. Recall the words of one of Unger's "heretical modernists":

The real dwelling plight lies in this, that mortals ever search anew for the nature of dwelling, that they must ever learn to dwell. What if man's homelessness consisted in this, that man still does even think of the real plight as the plight.

M. TAYLOR, *JOURNEY TO SELFHOOD, HEGEL AND KIERKEGAARD i* (1980), quoting Heidegger.

phenomenology reveals very different styles of speaking in religious life, moral conversations, deliberative political argument, and a great plurality even within legal discourse.⁶⁶ Unless reality is flattened out by a universal operationalism it would seem that forms of life may embody values discontinuous with those embodied in the means by which they in part fought their way into the political world. And hasn't some of their coming to be been through a kind of moral persuasion that can't be reduced to "fighting"? If politics is fighting, then everything is not politics.

If everything *is* politics what happens to the moral space? Lenin is again a good teacher here:

We say that our morality is entirely subordinated to the interests of the proletariat's class struggle . . . Morality is what serves to destroy the old exploiting society and to unite all the working people around the proletariat, which is building a new, a communist society. . . . To a communist all morality lies in this united discipline and conscious mass struggle against the exploiters. We do not believe in an eternal morality, and we expose the falseness of all the fables about morality.⁶⁷

So in his essays on Tolstoi, Lenin dismissed as "reactionary" that aspect of the great thinker's work that espoused moral perfection, universal charity, and nonresistance, but praised as progressive and "useful material" his criticism of the peasants' suffering and the hypocrisy of the Church.⁶⁸

Some of the "apolitical" features of these other discourses are conservative: They seek, at least in their own self-understanding, to preserve the institutionally embodied results of past prophecy and liberation. I don't think that Unger would claim that his ideal is neutral as to preservation or change, that it embodies merely an ideal of disinterested intelligence and criticism in these matters, that it merely seeks to open areas previously immune to criticism.

⁶⁶ I argue this at greater length in Burns, *Hannah Arendt's Constitutional Thought* 157, 175–79 *supra* note 48.

⁶⁷ LENIN, *WORKS*, 31 at 291–94 quoted in KOLASKOWSKI, *supra* note 6, at 516.

⁶⁸ Kolaskowski identified three main currents in Marx's thought. They exist in a complicated mix and there are strong tensions among them. The first is that most were influenced by nineteenth-century deterministic physical science. This is the strand that Unger jettisons. More dangerous, in Kolaskowski's view, are the romantic and Promethean strands in Marx's thought, which Unger intensifies. Marx's romanticism, like Unger's, counselled not a return to the past, but a quickening of the most distinctive features of the present order and an elimination of "mediating structures." Marx's "Faust-Promethean motif" manifested itself in his "faith in man's unlimited powers as self-creator, contempt for tradition and worship of the past," his emphasis on the collective mastery over first the natural conditions, then the social conditions of progress. It was this last, Promethean motif, which served as much of the justification for the elimination of democratic institutions under Lenin, when "Prometheus awakens from his dream of power, as ignominiously as Gregor Samsa in Kafka's *Metamorphosis*." *Id.*, Vol. I, 408–16, 420.

His theory seeks in principle to accelerate change through political practice understood as fighting. The theory is not rooted in any sort of transcendental reflection on the conditions of possibility of acting intelligently at all. It involves a choice. But without something like a transcendental method, Rawls' problem returns in an even sharper way. Why should one choose this very particular theoretical stance among other possible theoretical stances? What criteria of judgment could you possibly use?

The identification of the actual with the possible is no less "hallucinatory" than the identification of the actual with the necessary.⁶⁹ Unger "solves" the problem of developing norms for the basic structure of society in a most extraordinary way. He reinterprets the Christian vision to radicalize one of its themes, that of man as *homo viator*. This allows him to interpret modernism as a development of this Christian vision. But this does not allow him, in the manner of Rawls, to describe a regime which embodies the right in a stable manner. Indeed the criterion he takes from his modernist Christianity is a kind of procedural one: The exilic religious ideal requires incarnation in a constitutional regime that is endlessly remade, in which homelessness is actively sought.

In his little classic, *Christ and Apollo*, William Lynch argues for the profound discontinuity between Christianity and precisely the kind of modernism that Unger espouses. He argues that modernist drama is inferior to classical and Shakespearean drama specifically in the quasi-theological exaltation of its heroes:

[T]he "tragic figures" of the modern stage are usually doing very nicely indeed in our last acts in point of strength, energy, and exaltation. Up to the very last act the new theatre was able to look at the truth like an eagle. But in the last act, it became incurably romantic, abandoned the finite, and grasped at any kind of infinite. . . .⁷⁰

Lynch's complaint is that these endings did not emerge from the true logic of the dramatic motion, but were just tacked on. These typical paeans to the immortal greatness of man were "nonevidential statements, attitudes which were blind assertions and thrust of the will."⁷¹ Modernist drama is blind to the deepest level of human existence, "a place where the human spirit dies in frequently real helplessness." Here is the authentic place of faith: where the soul "realizes that it is no match for the full mystery of existence, where, therefore, it suffers a death" that is the prerequisite to new life.⁷²

⁶⁹ FALSE NECESSITY at 291.

⁷⁰ WILLIAM LYNCH, *CHRIST AND APOLLO* 81 (1960).

⁷¹ *Id.*

⁷² *Id.* at 88–89.

The key to great literature is, as Goethe said, the vision of the universal in the particular, truly *in* the particular. Since the universal is in different particulars in different ways, this requires what Lynch calls the analogical imagination. This is in sharp contrast to the allegorical imagination which is an exercise in the *will*. Since modernism often conceded the order of cognition to science, it was easy for it to turn literature into “an instrument of power,” which could “at least use reality in the effort of the will, through vague thrusts. . . .”⁷³ “The will of itself wishes only to get to its goals; nor will it be very discriminating about the means, and will in fact reduce everything to a means, never caring cognitively for the thing in itself but always using it as an instrument.”⁷⁴ Lynch finds a good deal of the “imagination of the will” in the exploitive “univocality of the mechanically allegorical imagination.”⁷⁵ One thinks of the plays of Sartre. And one thinks of Unger’s histories in his third volume.

Lynch argues that great literature has a moral dimension⁷⁶ and draws on Thomistic metaphysics and Kierkegaard’s dialectics to argue that the “ethical is like reality itself in that it is *articulated*.”⁷⁷ It involves one family, not the idea of family, one set of specific concrete obligations that spring from talents and obligations. “It forces choices of the actual over the actual, the concrete over the concrete; it compels a man to choose *his* concrete.”⁷⁸ Each thing is what it is and no other and “there are profound sources of differentiation which we call good and evil.”⁷⁹ It may be true *speculatively* that each thing is what it is and everything else but not *morally*. Kierkegaard’s aesthetic man will, of course, have none of that:

This man imposes a blanket of “the beautiful” over this field of articulation, thus wiping out the lines and situation of the latter in one magnificent stroke. Given the right techniques, the right moment, the right magic, “beauty” can equalize or abolish good and evil, can eliminate the necessity of choice, can smash the Ixion wheel of struggle. . . . In the name of infinite possibility one must be cautious not to commit oneself to the finite. To do so is unscientific, vulgar, and actual. It is a violation and a loss of freedom. The actual is a narrow gate, and who ever heard of entering heaven by a narrow gate?⁸⁰

⁷³ *Id.* at 128.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See also I. MURDOCH, *supra* note 61.

⁷⁷ *Id.* at 129. See M. TAYLOR, *JOURNEYS TO SELFHOOD: HEGEL AND KIERKEGAARD* 241–52 (1980). For Unger the “original truth” of art is *indefiniteness* and its quest is for the unlimited. *FALSE NECESSITY* at 574.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 129.

I am myself no theologian, but the reference to the narrow gate is, of course, to Matthew 7: 13–14.⁸¹ The saying summarizes the life of the Golden Rule and the entire Sermon on the Mount and echoes the first of the Beatitudes, “Blessed are the poor in spirit.” “The implication of this claim is that when we approach the gate, our fulness must contract into emptiness if God is to give us access to divine happiness.”⁸² The narrow gate can only be entered alone and we must bend our natural consciousness to get through. “The pathway he asks us to follow leads us to the freedom of a disciplined life, and it is life of this kind that will finally allow us to express divine perfection.”⁸³

Freedom is not to be identified with the apparent spontaneity and with the sheer diversity of a broad pathway, but with the focused and the orderly existence of the narrow way. . . . The alternative to such a life, where the erotic consciousness seeks to express itself freely along a broad path, will never lead to the fulness it seeks. Jesus tells us that the wide gate and the broad pathway lead to destruction and that *they do so as a natural result of the human quest for perfection*. If we miss the narrow gate and the narrow path, we will be destroyed, not by divine vengeance, but by our insistence upon following a pathway of our own.⁸⁴

The asking and seeking that Jesus demands no doubt involve a great deal of psychological intensity. The danger is that “God is not lost but simply displaced by our own infinite demands to achieve divine perfection for ourselves.”⁸⁵ Vaught continues in a manner strongly reminiscent of Unger, but reaching a conclusion for religious life far more consistent with the view of Kant in morals and Lynch in aesthetics:

The only self-defining being is a divine being, and this fact becomes a human problem because we are not only finite . . . but infinite as well. We are both finite and infinite at once. Because we are not simply finite but infinite as well, the natural consciousness attempts to explode beyond its finite limits, displacing our finitude with an infinite power of its own.⁸⁶

For Unger, the religious consciousness’ infinity is made an infinity of discontent. Though he tells us that the transformative vocation will produce anxiety when it does not have means and opportunity, it appears that such vocation will be permanently anxious. It will always be hunting down something to push against. The self’s sense of its own reality can come only where it feels resistance. But Unger’s social world is an infinitely plastic world—and it is infinitely plastic in conception to

⁸¹ “Enter by the narrow gate; for the gate is wide, and the way is broad that leads to destruction, and many are those who enter by it. For the gate is small, and the way is narrow that leads to life, and few those who find it.”

⁸² C. VAUGHT, *THE SERMON ON THE MOUNT: A THEOLOGICAL INTERPRETATION* 178 (1986).

⁸³ *Id.* at 180.

⁸⁴ *Id.*

⁸⁵ *Id.* at 172.

⁸⁶ *Id.* at 172.

Unger's transformer, though the slightest attempt actually to transform even a small part of it will demonstrate how little plastic it is.⁸⁷ The world's resistance will inevitably be conceived as an irritant, a technical problem for the politician-as-builder or a tactical problem for the politician-as-fighter, an irritant to the infinite advance of will. No wonder that technical and tactical metaphors often seem most appropriate for comprehending rhetoric, his chosen medium, *when politics is conceived so tactically*. A vision of the social world (and as in Marx, there is no real vision of the natural world as having even relative independence) as infinitely plastic will never satisfy the self because one can never reach the other, the "absolute" in any part of it. Unger notes that a kind of madness ensues where the conditions for self-assertion do not prevail. I believe that the vision of the social and political world as infinitely plastic, as "prime matter" as the Thomists say, for the transforming will is a kind of madness. It should be only a kind of "methodological postulate" for a certain limited kind of practice and must be subject to critique in the pre-Marxist sense of limitation of spheres.

There is all the difference between refusing to conspire in murder, as in the philosophical conscientious refusal of Socrates and the Christian conscientious refusal of Jaegerstaeter, and even in a willingness to fight physically or verbally for the real needs of the other, and a vocation that simply looks for a fight. Unger's rejection of the "moderate Aristotelian city" is in the name of the modernist depiction of the contextless subject which he takes to be continuous with Christian notions of the world as exile.⁸⁸ But it seems an idealistic wave of the theorist's wand that attempts to reconcile Christian practice that has given preeminence to the peacemaker and the suffering servant with that of the modernist transformative vocation's focus on successful fighting. It does serve the needs of the system for a source of normative energy. Was it Nietzsche who said, "The will to system is the will to lie"? Christ says: "Don't let the left hand know what the right hand is doing." "When you pray go into your room and close the door." The transformer, Unger admits, wants to shine and lord it over the other all in the stated interests of service.

The Kantian elevation of the moral point of view necessarily implies that much more of the political and social world has to be taken as just "given," as subject to "natural" forces, of physical nature (recall Montesquieu), or of human psychology. The praxis unconstrained by the moral point of view that would imply successful "acting into na-

⁸⁷ Recall Mitya's argument in *The Brothers Karamazov* that the doing of a modest but real good, like keeping down the price of meat, rather than building ideological crystal palaces of possibility, is a moral act that only a real faith will sustain. F. DOSTOEVSKY, *THE BROTHERS KARAMOZOV* 721 (modern Library College Edition 1950).

⁸⁸ He also says that mass politics, world history, and international military competition accomplish "what the great religions never could." I do have to suspect these vast equivalencies.

ture" here would inevitably be a Promethean exercise "beyond good and evil." Indeed the virtue that Unger consistently recognizes is put most in jeopardy of his mode of praxis is precisely "loyalty." Recall the words of a Christian statesman of great experience and depth:

To separate himself from the society of which he was born a member will lead the revolutionary, not to life but to death, unless, in his very revolt, he is driven by a love of what, seemingly, must be rejected, and, therefore, at the profoundest level, remains faithful to that society.⁸⁹

As Royce argued, loyalty is not just one virtue among others. There is an ideal relationship between the moral point of view and the virtue of loyalty. Murdoch writes that "all is vanity" is the first lesson of ethics: For the moral point of view the great enemy is willfulness in conceiving reality and in pursuing one's own projects ruthlessly. It blinds a person to the "central insight of Kantian ethics," that the more the separateness and differences of other people are realized, and the fact that others have needs and wishes as demanding as one's own is appreciated, the harder it is to treat another person as a thing.⁹⁰ For the concrete individual a critical loyalty to a joint enterprise that "balances" the needs and wishes of many persons embodies this loyalty. Unger knows that loyalty will be a very difficult virtue in his regime.

CONCLUSION

Heidegger compared Kant's theoretical philosophy to a fortress which many have passed by without storming and which thus still dominates the landscape. In that sense, many philosophies that have come after Kant are pre-Kantian. Kant sharply divided the aesthetic from the moral, the realm of the artistic artifact from that of the imperatives for action. Great art is recognized because it occasions the "subjective" pleasure in the harmony of our faculties, the infinites of reason and the finites of sense, imagination, and understanding. Romanticism effaces the distinction.

But Unger knows this too. He makes no claim that his "rainbow bridge of concepts" mirrors the real world. He does tell us that theory should aspire to art in its revelation of possibility. Is the theory then an aesthetic object? Or does it have genuine normative force? I recall what Edmund Wilson wrote about Lassalle:

Lassalle, with a pride that like Swift's always took the form of insolence, was driven, for all his princely tastes, to fight for the dispossessed proletariat just as surely as Swift, for all his worldly ambitions, was driven to fight for the impoverished Irish. Such a man can never figure as a prince save in the realm of art, morals, and thought; and he

⁸⁹ D. HAMMARSKJOLD, *MARKINGS* 79 (1964).

⁹⁰ I. MURDOCH, *supra* note 61, at 66 (1970).

can never make deals and alliances—in this Lassalle is quite unlike Disraeli—with the princes of this world⁹¹

Unger is a prince in the world of thought at least in Machiavelli's sense: He wants to teach us how not to be good. He knows that too. He is aware that he is attempting a transvaluation of the traditional tie between Christian self-understanding and the moral point of view. He seems convinced that this is the price of the "repoliticization of the biblical inheritance."⁹²

Why pursue Unger's possibility, with all the dangers he warns us of? Why accept the robustness of this kind of theoretical willfulness when so many millions have given their lives for the doctrines of "clever and bookish militants who [often hypocritically, Unger tells us] saw themselves as friends of the people." Not in the interest of reason, or universal morality, nor to further the interests of a universal class. Because it is likely to be more successful? He argues that way, and indeed devotes his third volume to that argument. I suspect, though, that the "success" is a subordinate argument. As he says, a secular normative argument will root itself in a concept of the personality, of activity, or personal encounter. His is rooted in the notion of personality and personal encounter described in *Passion*.

Without a transcendental perspective can he claim any more for his theory than that it is the "ideological seduction" of a particularly able, ambitious and clever rhetorician? But why does he give us such hostage words by which to describe his own theory? Why is he honest about the transvaluation of values that his theory implies? In what interest does he tell his reader about the dangers for our most cherished rights and practices his theory holds? Is it only because it is the way of a good rhetorician? Or does his honesty on this score embody older ideals of truthfulness that a purely operational method cannot make sense of? Should he have this insight into his own honesty, would it be one of those whose truth requires a new context, a notion of a theory that aspires to more than a call to arms?

The content of the theory and the philosophical claims for the theory are closely related. The Thomist can speak robustly and without theoretical embarrassment of the analogous structure of reality. His world is filled with finite beings and one sort of being—the human—which is an infinite in the finite, though not "caught" in the finite. He "becomes who he is" by thinking, acting, and making in ways that respect natural limits. God is the "principle of concretion" who defines all finite beings, who *can* create the not-God only by a negation of his own Infinity. The Thomist too holds that, with the one exception of

⁹¹ E. WILSON, *TO THE FINLAND STATION: A STUDY IN THE WRITING AND ACTING OF HISTORY* 252 (1940).

⁹² J. HABERMAS, *LEGITIMATION CRISIS* 212 (1973).

God, *omnis determinatio est negatio*.⁹³ Since everything is what it is by a communication of necessarily finite being, God is at the center of every being and at its borders, because its borders are its center. The self-limitation of ethics feels sacrificial, but the dismemberment of the the “old self” that comes in the main from surrendering possibility opens the self to Being itself. This carries over into social philosophy: The “imperatives of political and social morality derive from the inherent [‘natural’] order of political and social reality itself, as the architectonic moral reason conceives this necessary order in the light of the fivefold structure of obligatory political ends—justice, freedom, security, the general welfare, and civil unity or peace. . . .”⁹⁴ These ends are “public not private. They are therefore strictly limited.”⁹⁵

Modern philosophy developed largely in reaction to Galilean science’s claim to be the organon of truth about reality. A fully “mathematized” nature,⁹⁶ including human nature, of course, simply could not be understood as containing morally significant “articulations.” Kant’s critical philosophy, the philosophy of limits, was developed in response to the intellectual crisis caused by modern science’s truth claims. It preserved the Platonism in morals (the categorical imperative is the only “fact of reason”) that could limit the political realm and could limit the rule of *homo faber* in politics. The political was in the service of the moral. There was something to find and to respect; everything was not fabricated: “[E]verything . . . cannot be reduced to an instrument of policy in the quest for empty success.”⁹⁷ A critical thinker like Arendt abandons the Platonism but remains a thinker of the limit. She bears the theoretical tensions of unresolved questions about the interrelations of the critically differentiated spheres in the interest of practical decency or meaningful action.⁹⁸ The will drives the

⁹³ In different ways, Hegelians and Process thinkers hold that this metaphysical principle applies to God as well.

⁹⁴ J. MURRAY, *WE HOLD THESE TRUTHS* 272 (1960).

⁹⁵ *Id.*

⁹⁶ E. HUSSERL, *THE CRISIS OF EUROPEAN SCIENCES AND TRANSCENDENTAL PHENOMENOLOGY* 23 (1970).

⁹⁷ Traversi, *Henry the Fourth, Part I*, 15 *SCRUTINY* 15 (1947–48), quoted in A. DONAGAN, *THE THEORY OF MORALITY* 240 (1977).

⁹⁸ Thus a great neo-Kantian thinker like Max Weber will argue, in effect, that the political vocation is absolutely antithetical to the absolute ethics of Jesus and yet that there is a relationship in the purely spontaneous act of conscience (“Here I stand. I can do no other.”) of a “mature man.” Weber’s classic description of the political vocation and of the Christian vision bear a comparison with Unger’s “transformative” vocation that I cannot undertake here. Weber’s descriptions of both religious and political life seem to me less willful than Unger’s. He is unwilling to dissolve strong contraries by the “transvaluation of values,” political and religious, that can be achieved by an idealistic wave of the theoretical wand. The theoretical temptation to elude such tensions may stem from a will or a felt “responsibility” to . . . well, make world history come out right. That is ridiculous. It is also dangerously Promethean. Weber, *Politics as a Vocation* in *FROM MAX WEBER: ESSAYS IN SOCIOLOGY* (H.H. Gerth and C.W. Mills eds. 1964).

theoretical intellect to quest for the One. As Plato said, one should not go from the many to the One too quickly.

Unger's theory cannot *in principle* find or recognize value, limited and situated, in existing institutions or practices, or see some such institutions as instrumental in preserving the conditions of moral life. All of its laws are "laws of movement."⁹⁹ It aims only at the acceleration of the process of destruction and reconstruction.¹⁰⁰ Rawls has called his method "Kantian constructivism." Unger's is best described as "Sophistic constructivism."

Some may actually modify their practice in light of this theory. But others will prefer to wait for another theory:

There may be new revolutions and new Napoleons; there may be new heroes and new martyrs for conscience, but it is not the business of philosophy to prophesy their advent or, most certainly, to encourage and assist in their birth. For better, but probably for worse, they may come about, but 'philosophy is the exploration of the rational, it is for that very reason the apprehension of the present and the actual, not the erection of a beyond, supposed to exist, God knows where, or rather which exists, and we can perfectly well say where, namely in the error of one-sided, empty, ratiocination.'¹⁰¹

⁹⁹ A. ARENDT, *supra* note 30 at 463 (1973).

¹⁰⁰ *Id.* at 467.

¹⁰¹ J. ROBINSON, DUTY AND HYPOCRISY IN HEGEL'S PHENOMENOLOGY OF MIND: AN ESSAY IN THE REAL AND IDEAL 130 (1977), quoting G. HEGEL, PHILOSOPHY OF RIGHT 10.